IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3463 of 1998

with

FIRST APPEAL No 3469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HEIRS OF DEC LALCHANDBHAI PRATAPJI SHAH

Appearance:

1. First Appeal No. 3463 of 1998

MR HARDIK C RAWAL for Petitioner

2. First AppealNo 3469 of 1998

MR HARDIK C RAWAL for Petitioner

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 09/12/98

ORAL JUDGEMENT

Against the awards dated 13.12.1997 passed by Motor Accident Claim Tribunal (Aux.) at Palanpur in MACP Nos. 444/87 and 445/87 awarding the compensation, the

appellant-original opponent No.2 has filed these two appeals. As common questions have been raised, both the appeals are at admission stage, heard together and by this common order both the appeals shall stand disposed of.

2. Necessary facts may in brief be stated. Lalchand Pratapji who died during the pendency of the petitions was the owner of jeep No. GAE 3687. His driver Mohammed Rafiq was going towards Dhanera from Deesa driving the jeep. When the jeep reached near the junction known as Dhanera-Deesa Char Rasta one ST bus GRR 8686 was found coming from the opposite direction. Both the vehicles collided. The jeep was badly damaged and Mohammed Rafiq the driver of the jeep was also injured. Lalchand Pratapji therefore filed MACP No. 444/87 for compensation of Rs. 51,670/- while Mohammed Rafiq filed MACP No. 445/87 for compensation of Rs. 25,000/-. The Tribunal awarded Rs. 40,801/- to Lalchand Pratapji and Rs. 17,000/- to Mohammed Rafiq the driver of the jeep holding that the bus driver was negligent in driving the ST bus and not the jeep driver. Against such awards passed by the Tribunal appellant the owner of the bus has filed both these appeals.

3. The learned advocate representing the appellant challenges the awards on three grounds. The first is about negligence. According to him the jeep driver was also negligent and that can be seen from the panchnama. Perusing the panchnama and the copy of the judgment, what follows is that the width of the road is 24 feet and on both the sides there are shoulders. The jeep was going towards Dhanera from Deesa while the bus was going towards Deesa from Dhanera. When the jeep reached near the junction of the road, the bus was found approaching from the opposite direction. What further becomes clear is that the photos were produced which made the picture clear. Both the vehicles were found on the left side shoulder while proceeding towards Dhanera. The jeep was on its correct side and that too on extreme left. The bus was on its extreme right side i.e. wrong-side. Such position apparently would lead to hold that the bus-driver was at fault, and jeep driver was not blame-worthy. However in some cases such position of the vehicles may not always be the guarantee of innocence of one and guilt of the other, but in this case such position is a pointer of guilt on the part of the bus-drver and not the jeep driver. The bus driver while filing the complaint before the police station stated the manner in which the incident happened. A donkey suddenly came on the road and to save the donkey he took the right

turn with the result he went on the wrong side and collided with the jeep. The driver has not explained whether it was possible for him to apply the brake, slow down the bus and avert the incident after seeing the donkey. It is also not made clear at what distance the donkey was when he first noticed the donkey on the road. What can therefore be deduced is that the bus was driven at the hectic speed other wise the bus driver could have applied the brakes and stopped the bus and control the situation. The fact that he could not stop the vehicle and had to proceed towards the wrong side shows that he was not in a position to control the vehicle being driven at the excessive speed. Not to drive at the excessive speed is the duty of the driver. When the bus driver has in this case committed the breach of his duty viz., not to drive at the excessive speed he can be blamed for being rash and negligent in driving the bus. It is also clear from the evidence as discussed by the learned Tribunal that the jeep was being driven at the moderate speed and realising that the bus was swerving on its wrong i.e., his correct side he applied the brakes, went to his extreme left and slowed down the jeep but when the jeep was about to be stopped the bus reached there and collided with the jeep. It thus appears that the driver of the jeep did whatever he was supposed to do, and possible to do at that moment to avert the incident but was helpless. He therefore cannot be blamed. The vehicles when found in above said position therefore establish the wrong on the part of the bus-driver and not on the part of jeep driver, even to a little extent. The Tribunal is therefore perfectly right in fastening the liability solely on the bus driver holding that the bus driver was rash and negligent in driving the bus and not the jeep driver. I therefore see no reason to interfere with the finding of the Tribuhnal.

4. It is the next contention that the insurer of the jeep ought to have been joined as the party. Though the application was given for its joinder the same was not allowed. As in this case the bus driver is found at fault wholly and the jeep driver is not at fault, joinder of the insurance company was futile & of no signifance.

5. The learned advocate representing the appellant lastly submits that the Tribunal has awarded the amounts on a higher side. The same being not reasonable and fair this Court may reduce the same. The learned Judge has discussed all the heads distinctly keeping the evidence on record in mind. As per the bills produced the compensation qua the damage caused to the jeep is awarded. There is no reason to doubt the bills produced.

The learned Judge has rightly placed the reliance thereon and awarded the amounts actually spent by the owner of the jeep for carrying out necessary reparation of the jeep. It cannot on any reasoning be said high or cumbersome. Likewise is the case in another petition. (MACP No. 445/97). The jeep driver was injured. He sustained fracture of right ankle bone. When Doctor examined it was also found that the movement of the right shoulder was restricted. For about 6 months he had to take the medical treatment and rest in the Hospital and home as well. He therefore sustained the loss of income because he could not resume his duties. He was earning Rs.1000/- p.m. He therefore sustain loss of income to the tune of Rs.6000/-. For medical treatment, hosptal charges he had to spend more than Rs. 5,000/-. For 6 months or more Mohammed Refiq had to undergo excruciating pain. For pain, shock and suffering Rs. 5,000/- are rightly awarded. Some one was required to attend him when he was hospitalised and had also to spend for special diet and conveyance. The learned Judge has rightly awarded Rs. 1,000/- for the same. Thus, the award of Rs. 17,000/- appears to be just and proper, it cannot be said to be unduly high & unjust as canvassed before me. On no other ground, submissions were made. For the aforesaid reasons, I see no justifiable cause to admit the appeal and call upon the other side to meet with untenable points raised in this appeal. These two appeals are therefore liable to be rejected and are accordingly rejected, at the admission stage.

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(rmr).